

February 14, 2023

The Honorable John F. Docherty  
United States Magistrate Judge  
United States District Court  
316 North Robert Street  
St. Paul, MN 55101

VIA EMAIL

Re: *Berry, et al. v. Hennepin County, et al.*, Case No. 0:20-cv-02189-WMW-JFD  
Notice of Supplemental Authority – *Kaplan v. Harrington*, Civil No. 22-0640  
(JRT/JFD), 2023 WL 1797872 (D. Minn. Feb. 7, 2023)

Dear Magistrate Judge Docherty:

Defendants jointly submit this letter notifying the Court of supplemental authority that supports Defendants' joint opposition to Plaintiffs' motion for leave to amend the complaint (ECF 260).

On February 7, 2023, the day after Defendants filed their opposition memorandum (ECF 270), Judge Tunheim dismissed a § 1983 civil conspiracy claim in *Kaplan v. Harrington*, Civil No. 22-0640 (JRT/JFD), 2023 WL 1797872, at \*9 (D. Minn. Feb. 7, 2023). In that case, the plaintiffs claimed that state and county law enforcement entities and officials conspired to arrest and detain protesters under false pretenses. Their complaint alleged, among other things, that the defendants worked together in responding to protests and distributed an "ops plan" that stated, "Goal is mass arrest." *Kaplan*, 2023 WL 1797872, at \*4-5. Judge Tunheim held that the complaint failed to state a § 1983 conspiracy claim, explaining that the plaintiffs failed to plausibly allege that the purpose of defendants' cooperation and plan "was to conduct mass arrest **without probable cause**" in violation of the plaintiffs' civil rights. *Id.* at \*8 (emphasis original). Similarly, in this case, the proposed second amended complaint fails to plausibly allege that the purpose of Defendants' alleged cooperation in response to encampments was to unconstitutionally deprive Plaintiffs of their property.

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Respectfully,

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